

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:)	Docket No. HWCA 00/01-2004
)	
)	
John Smith Road Landfill)	CONSENT ORDER
3220 Southside Road)	
Hollister, CA 95023)	Health and Safety Code
ID No. CAD 990 665 432)	Section 25187
)	
County of San Benito)	
Respondent.)	
_____)	

The State Department of Toxic Substances Control (Department) and County of San Benito (Respondent) enter into this Consent Order and agree as follows:

1. Respondent manages hazardous waste at the following site: John Smith Road Landfill located at 3220 Southside Road, Hollister, California 95023 (Site).

2. The Department conducted a Groundwater and Operation and Maintenance Inspection of the Site on February 15 and March 7, 2000. The Department also conducted a Comprehensive Environmental Inspection on June 22 and 23, 2000.

3. The Department alleges the following violations:

3.1. Respondent violated California Code of Regulations (Cal Code of Regs.), Title 22, Section 66264.73(b)(6) and Section 66264.97(e)(4) and the Department-approved Sampling Analysis Plan (SAP) (Golder 1995) in that

from approximately September 1, 1997 to approximately March 7, 2000, Respondent failed to maintain the required documents and failed to follow the SAP as noted below:

- (a) The samplers did not document well conditions.
Some well labels were very faded or absent.
Some wells are producing sediment and may require redevelopment. Section 4.1.4 of the SAP requires that routine well maintenance include inspection and documentation of monitoring well conditions during each monitoring event, and replacement of locks and well development as deemed necessary by the project manager. Well development will be necessary if groundwater turbidity values increase or well yields decrease inexplicably, suggesting that the filter pack may be silted up.
- (b) Samplers were not wearing gloves. Appendix C, page C-4 of the SAP states that the sampler will wear clean powderless latex gloves during sampling.
- © Turbidity was not measured. Appendix C, Page C-4 of the SAP states that appropriate field meters will be used to monitor pH, electrical conductivity, temperature and turbidity. The Cal. Code of Regs., Title 22, Section 66264.97(e)(13) requires accurate determination of temperature, pH, electrical conductivity and turbidity at each well each time groundwater is sampled.

- (d) A field blank was not obtained. Appendix C, Page C-8 of the SAP states that one field blank for volatile organic parameters will be included per sampling event.
- (e) A temperature blank was not obtained and the sample cooler did not contain a thermometer. Appendix C of the SAP states that a temperature blank will be shipped to the laboratory with the samples to verify that the sample temperature was maintained during transport and that a thermometer will be kept in the sample cooler and will be checked periodically throughout the day.
- (f) The samplers did not calibrate the water-level sounders in the field. Appendix C, Page C-3 of the SAP states that the electric sounders will be calibrated in the field by taking a water-level measurement with the sounder and checking the measurement with a caulked steel tape and that the calibration checks will be logged into the instrument log book.
- (g) Four purge volumes were not evacuated from each well with sufficient yield before sampling. Appendix C, Page C-4 of the SAP states that four purge volumes should be removed before sampling.
- (h) Total depths of each well were not measured during the first quarter of 2000 and, based on the annual monitoring reports for 1997, 1998, and 1999, they do

not appear to have been measured in the last three years. Appendix C, Page C-3 of the SAP states that well measurements (water level and well total depth) will be taken using an electric sounder and that well total depth, used to calculate purge volumes and to determine whether the well screen is partially obstructed by silt, will be recorded to the nearest 0.1 foot.

- (I) The Solinst sounder used in measure water levels on February 15, 2000 was stamped at 0.02 foot intervals. Appendix C, Page C-3 of the SAP states that cable markings are to be stamped at 0.01 foot intervals.

3.2. Respondent violated Cal. Code of Regs., Title 22, Section 66264.97(e)(11) in that on or about April 1, 1998, Respondent failed to verify that a background well was properly sampled during the 1998 first half sampling event. Background well E-9 did not recharge within 24 hours after being purged dry and therefore a background sample was not obtained. No further action was taken by the Respondent. Appendix C, Page C-4 of the SAP states that if a well is dry for four consecutive quarters, or cannot be sampled because of very low yields, an evaluation will be made regarding the need to replace this well.

3.3. Respondent violated Cal. Code of Regs., Title 22, Section 66264.98(g) in that on or about March 7, 2000, Respondent failed to analyze COCs. The Cal. Code of Regs.,

Title 22, Section 66264.98(g) requires that COC sampling take place at least every five years.

3.4. Respondent violated Cal. Code of Regs., Title 22, Section 66264.97(e)(7) in that on or about March 1, 2000, Respondent failed to use an appropriate statistical method to compare the down gradient concentration of each monitored constituent with respective background concentration for the purpose of evaluating whether a release has occurred. Statistical analyses were not included in the 1999 Annual Report.

3.5. Respondent violated Cal. Code of Regs., Title 22, Section 66264.98(f) in that on or about April 13, 1999, Respondent failed to analyze groundwater samples for all identified monitoring parameters. Groundwater samples were not analyzed for chlorophenoxy herbicides. EPA Method 8140 was applied instead of EPA Method 8150. Additional samples were not collected for the correct analysis.

3.6. Respondent violated Cal. Code of Regs., Title 22, Section 66264.52(a)and(d), and Permit Sections VII(4) and (6) in that on or about June 23, 2000, Respondent failed to submit to the Department for approval a revised Contingency Plan as directed in a letter from the Department dated April 8, 1999.

3.7. Respondent violated Cal. Code Regs., Title 22, Section 66264.16(a)(1) and Permit Section VIII(1) in that as of June 23, 2000, the emergency coordinators, identified in

the Contingency Plan, had not completed the required hazardous waste emergency response training.

3.8. Respondent violated Cal. Code of Regs., Title 22, Section 66264.145(d)(3)(A) and Permit Section III(4)(b), in that as of June 23, 2000, Respondent failed to submit an originally signed Stand by Trust Agreement. The findings of a financial responsibility review, conducted by the Department, indicate that the Respondent had failed to submit an originally signed Standby Trust Agreement.

4. A dispute exists regarding the alleged violations.

5. The parties wish to avoid the expense of litigation and to ensure prompt compliance.

6. Jurisdiction exists pursuant to Health and Safety Code (HSC) section 25187.

7. Respondent waives any right to a hearing in this matter.

8. This Consent Order shall constitute full settlement of the violations alleged above, but does not limit the Department from taking appropriate enforcement action concerning other violations.

SCHEDULE FOR COMPLIANCE

9.1. Respondent has submitted a revised Sampling and Analysis Plan to the Department for review. Within 30 days of the Department's approval of the revised Sampling and Analysis Plan, Respondent shall submit to the Department a certification stating that Respondent shall follow the revised

Sampling and Analysis Plan as approved by the Department, and stating that Respondent has corrected all the violations noted in Sections 3.1 through 3.8 of this Consent Order. This certification shall be signed by a duly authorized representative of Respondent and shall contain the language in Title 22, Cal Code Regs., Section 66270.11(d).

9.2. Within 30 days of the Department's approval of the revised Sampling and Analysis Plan, Respondent shall submit a request for permit modification regarding the revised Sampling and Analysis Plan. Respondent's request for permit modification shall be sent to Mr. James Pappas, Chief, Land Disposal Branch, Department of Toxic Substances Control, 8800 Cal Center Drive, Sacramento, California 95826-3200.

9.3. Submittals: Except as otherwise specified in this Consent Order, all submittals from Respondent pursuant to this Consent Order shall be sent to:

Charlene Williams, Chief
Northern California Branch
Statewide Compliance Division
Department of Toxic Substances Control
700 Heinz Avenue, Suite 200
Berkeley, California 94710-2737

9.4. Communications: All approvals and decisions of the Department made regarding such submittals and notifications shall be communicated to Respondent in writing by a Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans,

specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of its obligation to obtain such formal approvals as may be required.

9.5. Department Review and Approval: If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Consent Order fails to comply with the Order or fails to protect public health or safety or the environment, the Department may return the document to Respondent with recommended changes and a date by which Respondent must submit to the Department a revised document incorporating the recommended changes.

9.6. Compliance with Applicable Laws: Respondent shall carry out this Consent Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

9.7. Endangerment during Implementation: In the event that the Department determines that any circumstances or activity (whether or not pursued in compliance with this Consent Order) are creating an imminent or substantial endangerment to the health or welfare of people on the site or in the surrounding area or to the environment, the Department may order Respondent to stop further implementation for such period of time as needed to abate the endangerment. Any deadline in this Consent Order directly affected by a Stop Work Order under this section shall be extended for the term of such Stop Work Order.

9.8. Liability: Nothing in this Consent Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent, except as provided in this Consent Order. Notwithstanding compliance with the terms of this Consent Order, Respondent may be required to take further actions as are necessary to protect public health or welfare or the environment.

9.9. Site Access: Access to the Site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any agency having jurisdiction. Nothing in this Consent Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Department and its authorized representatives may enter and move freely about all property at the Site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondent in carrying out the terms of this Consent Order; and conducting such tests as the Department may deem necessary. Respondent shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Order.

9.10. Sampling, Data, and Document Availability: Respondent shall permit the Department and its authorized

representatives to inspect and copy all sampling, testing, monitoring, and other data generated by Respondent or on Respondent's behalf in any way pertaining to work undertaken pursuant to this Consent Order. Respondent shall allow the Department and its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Consent Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Consent Order. All such data, reports, and other documents shall be preserved by Respondent for a minimum of six years after the conclusion of all activities under this Consent Order. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall either comply with that request, deliver the documents to the Department, or permit the Department to copy the documents prior to destruction. Respondent shall notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Consent Order.

9.11. Government Liabilities: The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties specified in paragraph 9.17 in carrying out activities pursuant to this Consent Order, nor shall the State of California be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to this Consent Order.

9.12. Additional Enforcement Actions: By agreeing to this Consent Order, the Department does not waive the right to take further enforcement actions, except to the extent provided in this Consent Order.

9.13. Incorporation of Plans and Reports: All plans, schedules, and reports that require Department approval and are submitted by Respondent pursuant to this Consent Order are incorporated in this Consent Order upon approval by the Department.

9.14. Extension Requests: If Respondent is unable to perform any activity or submit any document within the time required under this Consent Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

9.15. Extension Approvals: If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

9.16. Penalties for Noncompliance: Failure to comply with the terms of this Consent Order may subject Respondent to civil penalties and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, as provided by HSC section 25188 and other applicable provisions of law.

9.17. Parties Bound: This Consent Order shall apply to and be binding upon Respondent and its officers, directors,

agents, receivers, trustees, employees, contractors, consultants, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Consent Order.

PAYMENT AND ENVIRONMENTAL CREDITS

10.1. Payment. The penalty in this case is \$25,000. Within 30 days of the effective date of this Consent Order, Respondent shall pay the Department a total of \$5,000, as reimbursement for the Department's enforcement costs. Respondent's check shall be made payable to Department of Toxic Substances Control, and shall be delivered together with a copy of this Consent Order to:

Department of Toxic Substances Control
Accounting Office
P. O. Box 806
Sacramento, California 95812-0806

A photocopy of the check shall be sent:

To: Charlene Williams, Chief
Northern California Branch
Statewide Compliance Division
Department of Toxic Substances Control
700 Heinz Avenue, Bldg. F, Suite 200
Berkeley, California 94710

To: Orchid Kwei
Office of Legal Counsel
Department of Toxic Substances Control
1001 I Street, 23rd floor
P. O. Box 806
Sacramento, California 95812-0806

If Respondent fails to make payment as provided above, Respondent agrees to pay interest at the rate established pursuant to HSC § 25360.1 and to pay all costs incurred by the Department in pursuing collection including attorney's fees.

10.2. Environmental Credits. In addition to the payment of \$5,000 to the Department, Respondent shall carry out the Supplemental Environmental Project, February 15, 2002 revision, as set forth in Exhibit 1 attached hereto, as environmental credits toward the remaining penalty amount of \$20,000. If Respondent fails to carry out said Supplemental Environmental Project, Respondent shall immediately pay the remaining \$20,000 to the Department in the manner as specified in paragraph 10.1 above.

10.3. Quarterly Status Reports. Within 90 days of the effective date of this Consent Order, and at three-month intervals thereafter, Respondent shall provide to the Department a Status Report which details the progress of the Supplemental Environmental Project. The Status Report shall contain sufficient information about project implementation, schedules, any difficulties with the project, and any actions undertaken to accelerate the project or return it to schedule. The Status Report shall also contain a list of planned work for the next three months. Respondent's obligation to provide quarterly Status Reports shall cease upon completion of the project and approval by the Department.

10.4. Completion Report. Respondent is expected to complete the Supplemental Environmental Project within two years of the effective date of this Consent Order. At the completion of the project, Respondent shall provide to the Department a Completion Report to specify and document the implementation and completion of the work done, including, but not limited to, an accounting of the costs incurred by Respondent in carrying out the project. Respondent's obligations to carry out the Supplemental Environmental Project shall cease upon written approval of the Completion Report by the Department. The Completion Report shall be submitted to the Department no later than 60 days from the completion of the project activities.

OTHER PROVISIONS

11.1. Effective Date: The effective date of this Consent Order is the date it is signed by the Department.

11.2. Integration: This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this agreement.

11.3. Compliance with Waste Discharge Requirements:

Respondent shall comply with all applicable waste discharge requirements issued by the State Water Resources Control Board or a California regional water quality control board.

Dated: 9/26/02

{Original signed by Normandy A. Rose}
Signature of Respondent's
Representative

{Original printed by Norman A. Rose}
Typed or Printed Name and Title
of Respondent's Representative

Dated: 10/7/02

{Original signed by Douglas Hohman}
Douglas Hohman
Senior Hazardous Substances
Scientist
Northern California Branch
Statewide Compliance Division
Department of Toxic Substances
Control